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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

NASRIN BEHROOZI,

Plaintiff(s),

v.

NEW ALBERTSONS, INC.,

Defendant(s).

2:11-CV-579 JCM (NJK)

**ORDER**

Presently before the court is third party defendant Phaze Concrete, Inc.'s ("Phaze")<sup>1</sup> motion for summary judgment. (Doc. # 60). Third party plaintiff New Albertsons, Inc. ("New Albertsons") responded (doc. # 66), to which Phaze replied (doc. # 69).

Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996); FED. R. CIV. P. 56©). The moving party bears the burden of presenting authenticated evidence to demonstrate the absence of any genuine issue of material fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *see Orr v. Bank of America*, 285 F.3d 764 (9th Cir. 2002) (articulating the standard for authentication of evidence on a motion for summary judgment).

Only admissible evidence is considered on a motion for summary judgment. *Id.* at 773; *see*

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<sup>1</sup> Phaze is also known as John Beagley & Sons, Inc.

1 Fed.R.Civ.P. 56(e). Authentication is a “condition precedent to admissibility,” and can be satisfied  
2 by “evidence sufficient to support a finding that the item is what the proponent claims it is.” Fed. R.  
3 Evid. 901(a); *see also Jimena v. UBS AG Bank, Inc.*, 1:07-CV-00367 OWW, 2011 WL 2551413  
4 (E.D. Cal. June 27, 2011) *aff’d sub nom. Jimena v. Standish*, 11-16845, 2013 WL 223131 (9th Cir.  
5 Jan. 17, 2013).

6 Whereas the Phaze has failed to properly authenticate the evidence provided in support of  
7 the motion for summary judgment under the standards set forth in *Orr*, the court cannot find that  
8 Phaze has carried its burden under Fed. R. Civ. P. 56.<sup>2</sup>

9 Accordingly,

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Phaze’s motion for  
11 summary judgment (doc. # 60) be, and the same hereby is, DENIED without prejudice.

12 DATED April 1, 2013.

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15 **UNITED STATES DISTRICT JUDGE**

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28 <sup>2</sup> New Albertsons has also failed to authenticate its evidence in opposition of the motion for summary judgment.